APPENDIX I

COMMENT LETTERS ON THE
DRAFT EIS AND RESPONSES

P&M LAND EXCHANGE
RESPONSES TO COMMENTS RECEIVED ON THE
DRAFT ENVIRONMENTAL IMPACT STATEMENT

Comment Response 1: Letters 1-A, 1-B, 4, 14, 9, 11, 12, 13
Underground Coal Seam Fire on the Welch Lands

The underground coal seam fire on the Welch lands was very briefly mentioned on page 3-9 of the Draft EIS, but the location was incorrectly stated. While the fire was not identified as a topic of concern in the scoping comments or during the scoping meetings that were held in March of 2001, comments on the underground fire were received just prior to the distribution of the Draft EIS and concerns about the fire were included in several comment letters received on the Draft EIS. In response to the concerns expressed in those comments, BLM personnel have conducted site visits, reviewed aerial photography, talked with some of the local residents, researched the available information on the fire, and prepared a technical report concerning the fire. BLM's technical report is included as Appendix D of this Final EIS. An expanded discussion and maps of the fire can also be found in Section 3.3 of this document and a brief summary of the information in the technical report is presented here in response to the underground fire-related comments received on the Draft EIS.

The underground coal fire is located on a hillside between and north of two draws along the west bank of the Tongue River in the southwest quarter of Section 2, T.57N., R.84W. Based on field surveys conducted by BLM personnel using a GPS unit, the treeless area associated with the fire covers approximately 13 acres (or about 0.8 percent) of the (approximately) 1,600 acre Welch lands offered by P&M for exchange. The coal underlying the upper part of the hillside appears to be actively burning, as evidenced by fissures several feet deep. Gas readings in the fissures showed elevated levels of methane and carbon monoxide and depleted levels of oxygen.

There are three coal beds present below the surface of the hillside. In descending order, these coal beds are the Dietz 2, Dietz 3, and Monarch coal beds. The Dietz 2 bed is approximately 8 feet thick and has partially burned in prehistoric times to form clinker near the top of the hill. The Dietz 3 bed, which appears to be the main zone that is burning, is approximately 26 feet thick and is separated from the Dietz 2 bed by 80 to 90 feet of shale, siltstone, sandstone, and thin coal beds. The Monarch bed is about 16 feet thick and is separated from the Dietz 3 coal seam by 15 to 40 feet of shale, siltstone and sandstone. The Monarch has burned or is burning over a large area south of the Welch lands, but data are lacking as to whether it is burning or has burned at this site.

The fire on the Welch lands is probably related to an underground fire at the abandoned Acme No. 42 underground coal mine. The mine actively mined the

Monarch coal seam south of and on the Welch lands from about 1911 through 1940. Maps obtained from OSM's Mine Map repository indicate that most of the Monarch coal seam in the SE/4 SE/4 of Section 3, T.57N. R.84W., which is on the Welch lands, was mined. A prehistoric burn line kept the mine from advancing further north. Collapse of the mined out rooms between the pillars in the old underground mine workings allowed air inflow and some of the remaining unmined coal in the Monarch bed began burning sporadically. As the fire in the mined-out areas advanced, the overlying sediments and coal beds collapsed, and the fire may have spread to the overlying Dietz 2 and Dietz 3 coal beds through the fissures created by the collapse. Sporadic underground coal fires have been burning in the area of the Acme mine for at least the past 60 years. Based on a comparison of the mined-out area and what is known about the extent of the fire area in the 1940s, 1978, 1987, and the area of current burning in Section 2, BLM estimated that the fire has moved north several hundred feet in the past 24 years. The fire might also be related to collapse of underground workings at the Evans mine, where coal was mined for domestic use prior to 1909, as mentioned by Taff in USGS Bulletin 341-B. That publication reports an Evans mine along the west bank of the Tongue River in the south half of Section 2, T.57N., R.84W. A report prepared by Spectrum Engineering (2002) states: "The underground fire has now moved approximately a quarter of a mile north from the mine. If the fire continues to the north, it will reach the Dietz 3 outcrop on the opposite side of the ridge within 800 feet." The coal seam fire will probably continue to burn northward and westward until: 1) it runs out of coal, either by hitting an outcrop or prehistoric burn line; 2) the supply of oxygen is cut off because fissures fail to reach the surface; 3) the coal drops below the water table; or 4) the area is fully reclaimed. Burning could continue for tens to hundreds of years. At the present rate and direction of fire advance, the coal fire is not likely to affect the majority of the Welch lands in the foreseeable future.

Although mined-out areas extend underneath the Welch lands in SE/4 SE/4 of Section 3 and the W/2 SW/4 SW/4 of Section 2, a surface inspection in the fall of 2002 by BLM staff did not reveal any active fires in those areas. Future fires could occur in mined areas where subsidence has exposed coal to air and heat.

Comment Response 2: Letters 1-A, 1-B, 4, 9, 11, 12, 13
Thunder Child Fire

In July of 2001, a wildland fire started in the S/2 of Section 2, T.57N., R.84W. The fire, known as the Thunder Child fire, was reported on July 28, 2001 and declared out on August 3, 2001. The fire burned approximately 5,207 acres. Most of the area that was burned was privately owned. As of November 2001, the Sheridan Fire-Rescue Department lists the cause of the fire as undetermined, but identifies possible causes as lightning, the underground coal seam fire on the Welch lands, and human action.

Mr. Frank Mommsen, a landowner in this area submitted comments on the P&M Exchange and the Draft EIS stating that the fire was caused by the coal seam fire. Mr. Mommsen obtained reports from an Internet lightning detection service showing that there were no lightning strikes in this area in the time frame when the fire started. Another nearby landowner said that lightning strikes did occur in this area the day the Thunder Child fire started. The issue of the origin of the Thunder Child fire remains unresolved.

Comment Response 3: Letters 1-A, 3, 11, 12, 14
Management Options if BLM Acquires the Underground Coal Seam Fire

The BLM *Technical Report on the Welch Ranch Coal Fire*, included as Appendix D of this Final EIS, identifies and discusses several options that the BLM is considering related to changing the configuration of the Welch lands if the BLM's decision, following the completion of this environmental analysis and the completion of the public interest determination, is to proceed with an exchange. The options that BLM is considering range from completing an exchange for all of the offered Welch lands (approximately 1,600 acres) to deleting up to 210 acres from the Welch lands that BLM would acquire. The 210 acres that would be deleted from the tract includes a 40-acre parcel containing the fire plus a 60-acre parcel containing the area that was previously mined plus an additional 110-acre buffer zone.

Appendix D also discusses several options for managing the fire if BLM's decision, after completion of the environmental analysis and public interest determination, is to proceed with acquisition of all of the Welch lands offered for exchange by P&M. These options range from reclaiming the fire or completely fencing off the coal seam fire area from public access and posting warning signs, to managing and monitoring the fire for research or showcasing the area as an example of coal seam burning processes. Although the origin of this particular fire is probably due to collapse of a nearby old underground coal mine, natural, spontaneous coal seam fires have occurred extensively in this area and other parts of the Powder River Basin in Wyoming and Montana in the past. Prehistoric natural coal fires have resulted in the formation of extensive clinker deposits that provide important recharge zones for aquifers as well as important habitat areas for wildlife. If the exchange is completed as proposed and BLM acquires all of the Welch lands, management will be determined in a future planning action by the BLM Buffalo Field Office.

There are examples of burning coal seams located on other federal lands and managed by other agencies. At Theodore Roosevelt National Park in North Dakota, the National Park Service had a burning coal vein nature trail associated with a coal fire that started by lightning in the 1950s and burned until 1972. In the Little Missouri National Grassland, also in North Dakota, there are burning coal veins that ignite due to range fires and lightning. The

Forest Service has managed these sites by both digging out and isolating the burning veins and by fencing off the fires and posting signs.

Comment Response 4: Letters 1-B, 4, 11, 13
AML Actions to Control Underground Coal Seam Fires

A coal fire is eligible for full reclamation funding through Wyoming AMLD's SMCRA program, regardless of whether it is on public or private land, if:

1) the fire is the result of historic coal mining activity that occurred prior to the eligibility dates established in SMCRA;
2) the fire constitutes an extreme danger or potential adverse effect to public health, safety and property;
3) there is no responsible party with outstanding reclamation obligations for the site; and
4) the permittee has not re-disturbed the site after the eligibility date if the site is located within the boundaries of an active coal mine permit area. Currently, the area of the Welch fire is within the active permit area of the proposed Welch No. 1 North mine.

This program is funded through a 35 cent-per-ton reclamation fee collected by OSM from producing coal mines.

The Wyoming AMLD has done several reclamation and emergency rehabilitation projects to extinguish fires in the area of the abandoned Acme No. 42 underground coal mine during the past twenty years. In 1987, the Wyoming AMLD extinguished and reclaimed coal fires that were advancing upstream in a drainage located in the NE/4 of Section 10, T.57N., R.84W., south of the Welch lands. In September 2002, contractors for the Wyoming AMLD worked to stabilize the north end of the fire on the Welch lands. Smaller cracks on the hillside were excavated and filled with scoria (clinker) fines and country rock; larger cracks were filled with a slurry of scoria fines and water. The surface was then regraded. Vapor rising from bare spots observed during tours of the site in February 2003 by BLM personnel and by a WDEQ inspector indicate that the coal is still smoldering at depth.

The AMLD prioritizes all potential reclamation sites based on the level of hazard, accessibility to the public, and budgetary constraints. In the case of mine fires, AMLD involvement may depend on the degree to which success is expected in controlling or extinguishing the fire.

Comment Response 5: Letter 2

BLM received the following information from Fred Fouse, a USFS wildlife biologist in response to the Comment Letter 2. This information was incorporated into the Final EIS.

Paragraph 2: In addition to the big game species mentioned, there are, as Mr. Hunzie states, a lot of antelope in that area and they have many fawns with them this year.

Paragraph 3: It is not unlikely that grizzly bears might incidentally be present in the general vicinity. However, regular occupancy, including sows with cubs, is not confirmed at this time. Grizzlies that might move into or through the area would most likely be dispersing young adult males, most of which could be expected to be transients. Young females often establish home ranges adjacent or near to their mothers. Young males are more likely to disperse greater distances in search of home ranges not already occupied by older males. For the most part, it is the young males that are in the vanguard of the expanding grizzly bear population. Sightings of these do not necessarily mean they are residents, although they certainly could be.

The Kemmerer Ranger District is not likely to become regularly occupied grizzly bear range, including sows with cubs, as long as there are active grazing allotments for domestic sheep. This is a small area for grizzlies and they are prone to prey on sheep. The loss of bears through depredation conflicts could prevent establishment of a local breeding population.

There is confirmed evidence of grizzly bear movement southward. On 8/15/02 it was announced there is an ongoing investigation into the death of a grizzly bear on the Greys River District, some 30 miles south of the designated Grizzly Bear Recovery Zone.

Paragraph 4: Similar to the situation with the grizzly bear, transitory wolf presence is likely, but pack establishment and reproduction is not confirmed. Wolves are very long range dispersers and their presence is highly likely. However, there is no confirmed pack activity at this time at the south end of the Kemmerer Ranger District. Once a pack is established, my experience has been they are rather conspicuous. There will be numerous sightings on a regular basis rather than very scattered reports.

Mr. Fouse suggested that both grizzlies and wolves should be displayed as incidentally present as dispersing individuals, but not believed to have established breeding populations at this time.

Comment Response 6: Letter 3

The information provided by the Army Corps of Engineers in Comment Letter 3 was incorporated into the Final EIS in Sections 3.4.2, 3.4.6.2, and 4.4.7.

Comment Response 7: Letters 5, 12, 17
Lewis' woodpecker nesting areas

The PSO Tract being evaluated in the exchange is the tract that P&M applied for, which represents all of the federal coal lands that P&M identified for acquisition. The actual tract that BLM would offer to exchange for the properties offered by P&M will depend upon the appraised value of the coal as compared to the appraised value of the P&M properties at the time the exchange is approved. According to 43 CFR 2200.0-6 (c), lands or interests to be exchanged shall be of equal value or equalized. The presence of potential nesting habitat for the Lewis' woodpecker in the scoria hillsides on the western edge of the PSO Tract is a factor for consideration in defining a final tract delineation for the PSO Tract that will satisfy the requirement that the values of the lands or interests are of equal value, if a decision to proceed with the exchange is made.

Comment Response 8: Letters 5, 17
Permitting stage evaluation of wetland and riparian areas

As discussed in Sections 3.4.8 and 4.4.7 of the Draft and Final EIS, SMCRA and Wyoming statutes require the replacement of all jurisdictional wetlands that are disturbed by surface coal mining. Replacement of non-jurisdictional wetlands is determined by the surface owner of the lands being mined. Jurisdictional wetlands are those wetlands that are under the regulatory authority of the EPA and the COE pursuant to Section 404 of the Clean Water Act.

In the case of the PSO Tract, the surface estate is both privately and federally owned. As shown in Figure 3-13 of the Final EIS (Figure 3-9 of the Draft EIS), approximately 6.41 acres of the surface of the PSO Tract is public land administered by the BLM. As the surface managing agency, BLM would evaluate restoration requirements of non-jurisdictional wetlands present on the public lands, if any, at the time a mining and reclamation plan is developed for the proposed Ash Creek Mine.

Since restoration of all jurisdictional wetlands is required by SMCRA and Wyoming statutes and regulations, it is considered part of the proposed action. Wetland restoration plans are developed during the mine permitting stage, when a detailed mining and reclamation plan that specifically identifies the

areas of wetland disturbance is evaluated. Wetland restoration plans for jurisdictional wetlands must be approved by COE prior to approval of the mining and reclamation plan. Approval of the mining and reclamation plan would be required prior to initiation of surface disturbance activities connected with removing the coal included in the PSO Tract.

Please refer to Comment Letter 3 for additional information on COE requirements related to wetlands during the mine permitting stage.

Comment Response 9: Letters 5, 12

a) Appendix E of the Final EIS includes updated lists of species provided by USFWS (see Comment Letter 17). The expected impacts to Threatened, Endangered, Proposed, Experimental, and Candidate Species on the Bridger lands, JO Ranch lands, Welch lands, and the PSO Tract are summarized in Table E-1.1 of Appendix E. No adverse effects to any T&E, Proposed, Experimental, or Candidate species are anticipated as a result of federal acquisition of the Bridger, JO Ranch, and Welch lands, any effects as a result of federal acquisition of those lands would be expected to be beneficial. Consultation with USFWS will be completed before the BLM State Director makes a decision to approve or disapprove this exchange.

b) Regarding the potential for coal extraction on the private coal lands adjacent to the PSO Tract, this coal could be mined with the coal included in the PSO Tract or with other coal (federal or non-federal) in this area, if the economic conditions make it profitable to do so. The private coal on the nearby lands is not owned by P&M and P&M does not have an agreement with the owner of those lands to mine the coal. P&M could pursue such an agreement if the exchange is completed and if they determine that the economic conditions warrant proceeding with their proposal to mine the coal in the PSO Tract. However, under those circumstances, the owner of that coal could also pursue other options for mining the coal. Since decertification of the Powder River Basin in 1989, BLM has not received any applications to lease federal coal in this area, the only mine in Sheridan County (the Big Horn Mine) has ceased operations, and one of the mines in Montana (the Decker Mine) recently experienced layoffs due to plans to reduce production.

c) BLM plans no water depletion projects from Cow Creek if it acquires the JO Ranch lands.

d) The Final EIS has been updated to reflect these comments.

Comment Response 10: Letters 6, 7, 8, 10, 16, 18, 19

Comment letters received from the Wyoming Office of Federal Land Policy, Wyoming Game and Fish Department, and Wyoming State Engineer's Office, USFS Lakewood, Colorado Office, WDEQ (cc of letter to EPA), EPA (cc of letter to WDEQ, dated 9/24/2002, and P&M were reviewed and the information provided was incorporated into the Final EIS where appropriate.

Comment Response 11: Letters 9, 13

a) Since decertification of the Powder River Federal Coal Region in 1989, the Wyoming BLM has received more than 20 applications to lease federal coal to existing mines in the eastern Powder River Basin (Campbell and Converse Counties, Wyoming). Twelve maintenance leases have been sold at competitive sales in response to those applications and eight additional applications are currently pending. At those sales in Campbell and Converse Counties, the Wyoming BLM has received bonus bids ranging from $0.11/ton to $0.70/ton. During that same time frame, the Wyoming BLM has not received any applications to lease federal coal in the western Powder River Basin (Sheridan County, Wyoming) and the only operating mine in the county (the Big Horn Mine) has closed. There has been one recent competitive sale of federal coal in the western portion of the basin, in Montana and the bonus bid for that sale was about $.0.11/ton. This sale, which was held in 2000, involved 150 acres of federal coal resources adjacent to the Spring Creek Mine, which is operated by the Spring Creek Coal Company, a subsidiary of Kennecott Energy. As discussed in the EIS, this mine is located approximately 7.5 miles north of the PSO Tract. It is true that the lack of an obligation to pay federal royalty or meet federal diligence requirements would reduce the costs of mining private coal, however, it is also true that BLM assigns a higher appraisal value to tracts like the Spring Creek Tract, which was leased to an existing mine as a maintenance lease, than it would assign to a tract like the PSO Tract, which would be leased for a new start mine. This is based on the guidance found in the "BLM Guide to Federal Coal Property Appraisal," and is due to consideration of the capital costs that a new mine must incur in order to begin mining and shipping coal.

b) If the BLM offered the PSO Tract for competitive sale and if a bid for the tract was received at that sale that met or exceeded the fair market value of the tract, as determined by BLM, the proceeds from that sale would go to the General Fund, not to BLM for use in purchasing the properties that P&M is offering to exchange. Any other use of those proceeds would require Congressional approval. Additionally, P&M has clearly stated that it is not offering and does not intend to sell its properties to BLM

and Forest Service. If the exchange is not approved, P&M would consider subdividing the properties and offering them for public sale in order to maximize their value. (See Comment Letter 19). Therefore, the alternative of offering the PSO Tract for competitive sale and using the proceeds to purchase P&M's property is not a reasonable alternative and BLM did not evaluate it in detail in the EIS.

Under Alternative 2 in the Final EIS, BLM and USFS evaluate the alternative of applying for Land and Water Conservation Fund monies to purchase the lands offered by P&M for exchange and conclude that it is not a reasonable alternative in this case. As stated previously, P&M has clearly stated that it is not offering and does not intend to sell its properties to BLM and Forest Service. Consequently, the land is not subject to Land and Water Conservation Fund acquisition, as it requires a willing seller. If the exchange is not approved, P&M would consider subdividing the properties and offering them for public sale in order to maximize their value. (See Comment Letter 19). Even if P&M was a willing seller, the process of obtaining funds from the Land and Water Conservation Fund requires two to three years, is a competitive process involving Congressional approval, must involve lands that are located within or adjacent to nationally/administratively designated areas, and the money appropriated would be equal to the appraised value of the lands. Assuming that, in two or three years, an appropriation was obtained for Land and Water Conservation Fund for the purpose of acquiring the portions of the lands that are eligible to receive the funding (the Bridger lands), and that some or all of the eligible lands were still available for sale at that time, it is not likely the U.S. could successfully compete against private entities in acquiring the Bridger lands. The JO Ranch lands and Welch lands could not be acquired under the Land and Water Conservation Fund, as they do not meet the criteria that the land be within or adjacent to a nationally/administratively designated area.

c) The requirement to make a public interest determination that will serve the public interest and "meet the needs of the State and local residents and their economies" (43 CFR 2200.0-6 (b) is a separate and distinct requirement from the requirement to complete an environmental analysis to evaluate the impacts of a proposed exchange (43 CFR 2200.0-6 (h). Prior to making a decision on whether to approve or disapprove this exchange, the BLM Wyoming State Director will make a determination that the exchange will or will not be in the public interest after considering the factors listed under 43 CFR 2200.0-6 (b), the analysis in this EIS, and the appraisals that are current at that time. After completion of the EIS but prior to making a public interest determination and issuing a notice of decision, the BLM will schedule and hold a public meeting to receive public comments on the public interest factors of the proposed exchange, as required under 43 CFR 2203.3. Completion of

these steps will meet the requirements under 43 CFR 2201.7 (a), which state "Upon completion of all environmental analysis and appropriate documentation, appraisals, and all other supporting studies and requirements to determine if a proposed exchange is in the public interest and in compliance with applicable law and regulations, the authorized officer shall decide whether to approve an exchange proposal."

As discussed in Chapter 1 of the EIS, the Resource Management Plans for the Bridger Teton National Forest, BLM Pinedale Field Office, BLM Rawlins Field Office and BLM Buffalo Field Office allow for the acquisition and disposal of land through exchange, and therefore the P&M Exchange proposal is in compliance with the applicable Resource Management Plans. The federal coal included in the PSO Tract has been found to be suitable for further consideration for leasing following application of the four coal screens; therefore, surface coal mining on these lands does not conflict with the BLM Buffalo Field Office Resource Management Plan.

The State of Wyoming has indicated that it supports the exchange due to the additional opportunities for recreational activities and improved management of wildlife populations (see Comment Letter 6). These opportunities will have residual socioeconomic impacts to the local economies. No residual socioeconomic impacts are anticipated once a mine is closed and reclaimed, if the exchange is completed and if P&M proceeds with its proposal to open a mine on the PSO Tract.

d) The EIS addresses the suitability of the PSO Tract for surface coal mining in Section 1.4 because P&M proposes to mine those lands if the exchange is completed. The suitability or unsuitability of the P&M-owned tracts (Bridger lands, Welch lands, and JO Ranch lands) for coal mining is not addressed in the EIS because there are no proposals to develop coal on these lands. If the exchange is completed and if BLM and/or Forest Service receives an application to lease any federal coal (acquired or existing) on these lands, the unsuitability criteria along with the other coal screens would have to be applied before a decision to lease the federal coal resource on these lands could be made. At this time, BLM and Forest Service do not consider the coal resources that the federal government would acquire if the exchange is completed to be either environmentally or economically viable for mining.

e) The EIS recognizes the loss of royalty for the coal in Section 4.4.19.

f) The EIS evaluates the impacts of mining the federal coal included in the PSO Tract on topography, physiography, geology, minerals, soils, air quality, surface and ground water resources, alluvial valley floors,

wetlands, vegetation, T&E species, wildlife, land use and recreation, cultural resources, Native American concerns, visual resources, noise, transportation facilities, socioeconomic, and hazardous and solid waste in Sections 4.4.1 through 4.4.20 of the Draft and Final EIS and Appendix E. The cumulative impacts to these resources are considered in Section 4.8. The impact analysis, which is based on the conceptual mine plan provided by P&M, is consistent with the analyses BLM has conducted and is conducting to evaluate maintenance lease applications and applications that could result in new mines (e.g., the West Rocky Butte lease application) in the eastern Powder River Basin since decertification. If the exchange is completed and if P&M proceeds with its proposal to mine the coal included in the PSO Tract, a detailed mining and reclamation plan must be reviewed and approved by WDEQ/LQD prior to initiation of coal mining operations on the tract.

g) The potential royalty revenues that would be due to the state and federal governments are also "tangential values" that would be realized by the state and federal governments if the coal in the PSO Tract is leased and mined. BLM has received no applications to lease federal coal in Sheridan County, Wyoming, since the Powder River Federal Coal Region was decertified in 1989, and there are no surface coal mines in operation in the county at this time.

h) The Draft EIS mistakenly indicates that the exchange is being processed under the 1988 Federal Land Transaction Facilitation Act (FLTFA). The FLTFA, or Public Law 106-248, became law in 2000. The Draft EIS should have indicated that the exchange is being processed under the Federal Land Exchange Facilitation Act (FLEFA) of 1988, and the Final EIS has been corrected to reflect this. None of the lands that the USFS or BLM would acquire if the exchange is completed meet the requirements of FLTFA because the lands that would be acquired are not in-holdings that lie within boundary of a federally designated area, as defined under FLTFA. Also, as stated previously, P&M has not offered and does not intend to sell its properties to BLM.

Comment Response 12: Letters 9, 13
Exchanges of Equal Value

In completing an exchange, the requirement to conduct an environmental analysis in accordance with NEPA [43 CFR 2200.0-6 (h)-*Environmental Analysis*] is a separate and distinct regulatory requirement from the requirement that the "lands or interests to be exchanged shall be of equal value or equalized…"[43 CFR 2200.0-6-*Equal Value Exchanges*]. Under 43 CFR 2201.7 (a), the regulations refer to completion of both the environmental analysis and the appraisals as "supporting studies and requirements to

determine if a proposed exchange is in the public interest and in compliance with applicable law and regulation." Accordingly, the analysis in this EIS is not intended to satisfy the requirements under 43 CFR 2200.0-6 (c). NEPA requires the preparation of an environmental analysis, in this case an EIS, which involves preparation of both a draft and final document and mandatory review and comment periods for both. As a result, it requires some time to complete an EIS. The appraised values of both the federal coal included in the PSO Tract and the land that P&M is offering have changed since the Agreement to Initiate an Exchange was signed and since the Draft EIS was released, and there will probably be additional changes before the NEPA process is completed. The NEPA analysis considers the exchange of all of the coal that P&M has identified for acquisition so that the EIS analysis of the environmental impacts of mining the coal includes the maximum amount of coal that the government is considering exchanging.

Prior to making a decision on whether or not to approve this exchange proposal, the authorized officer (the Wyoming State Director) will:

- make a determination as to whether the exchange lands are of equal or approximately equal value or can be equalized;
- schedule and hold a public meeting to receive public comments on the public interest factors of the proposed exchange;
- consider the analysis in this EIS; and
- make a determination that the exchange will or will not be in the public interest after considering the factors listed under 43 CFR 2200.0-6 (b)

The determination of whether or not the lands P&M has offered for exchange and the federal coal they want to acquire are of equal value or can be equalized in accordance with 43 CFR 2201.6 will be made using appraisals that are current at the time that the BLM considers approving the exchange. Appraisals that were conducted prior to that time are pre-decisional; they do not represent the values that will be used in determining if the exchange lands are of equal value.

The BLM will publish a notice of the decision to approve or disapprove the exchange as required under 43 CFR 2201.7-1(a) (1). That decision can be protested for a period of 45 days from the time the notice of the decision is published as required under 43 CFR 2201.7-1 (b).

Under 43 CFR 3480.0-5(a)(21), *maximum economic recovery* means that, "based on standard industry operating practices, all profitable portions of a leased federal coal deposit must be mined." The requirement does not apply to unleased federal coal deposits.

Comment Response 13: Letters 11, 13
Coal Conveyor Disturbance Area and Location

The 2,595 acres estimated disturbance area discussed on page 2-7 of the Draft EIS includes the estimated disturbance area for both the proposed coal conveyor and the rail loop and loadout facilities, based on the conceptual mine plan P&M provided for this analysis. The proposed conveyor location represents the most direct route between the proposed coal facilities on the PSO Tract and the proposed site of the unit train loadout facility on the BNSF mainline south of the PSO Tract. P&M selected the location of its proposed loadout facility to minimize disturbance and maximize use of existing facilities on the BNSF mainline. BLM is disclosing P&M's proposed conveyor location and proposed loadout facility location in this EIS. This disclosure does not grant approval of either the location or the construction of these facilities. BLM is not the agency that would authorize either the location or construction of these facilities. If the exchange is approved and if P&M proceeds with its proposal to open a surface coal mine, P&M would have to secure right-of-way agreements with Mr. Mommsen and any other surface land owners the conveyor would cross, as well as permits to construct the conveyor prior to initiating construction activities. The location of the facilities could change based on a number of factors, including costs, rights-of-way, and requirements imposed by construction permits. The Final EIS includes an additional explanation of the conceptual nature of the mining plan used in preparing the EIS analysis, describes the kinds of approvals that would be needed prior to construction of a conveyor, and recognizes the potential adverse impacts that would occur to a dwelling located in the NW/4 NW/4 Section 33, T.58N., R.84W. if the conveyor is actually approved and constructed in the location shown in the EIS.

Comment Response 14: Letters 11, 13

a) The Final EIS has been corrected to reflect that the Ash Creek Road is not a public road.

b) Section 3.4.5 of the Final EIS describes both voluntary measures that some of the mines have instituted and measures required by WDEQ at some existing mines related to NO_X, including direct notification of neighbors and workers prior to blasting. The specific measures that WDEQ might require would be determined during the mining and reclamation permit approval process for the Ash Creek Mine, if the exchange is completed and if P&M proceeds with the proposal to mine the coal in the PSO Tracts. Other mechanisms that can be requested during the permitting process to protect adjacent landowners from impacts related to blasting include a pre-mining blasting survey to establish pre-mining conditions of water wells and structures that could

be affected by blasting activities and a hearing before the Environmental Quality Council.

c) The estimated PM_{10} level of 16.7 µg/m^3 (Figure 4-1) and the estimated NO_X level of 24 µg/m^3 (Figure 4-2) are both below federal standards, which are shown in Table 3-4 of the Final EIS. As indicated in the first paragraph of Appendix F of the Draft EIS (page F-1), one part per million (ppm) of NO_2 in air equals 1,880 µg/m^3. The EPA Significant Harm Level for NO_2 (1-hour average) of 2 ppm equals 3,760 µg/m^3 and the NIOSH Immediately Dangerous to Life & Health Level for NO_2 of 20 ppm equals 37,600 µg/m^3 (see page F-3 of the Draft EIS).

d) The groundwater right located in Section 33, T.58N., R.84W. is included on Page E-6 of Appendix E (Appendix G of the Final EIS) in the Draft EIS. Figure 4-3 of the Draft and Final EIS shows expected groundwater drawdown impacts from the proposed Ash Creek Mine. No impacts to groundwater are expected to wells located in Section 33, T.58N., R.84W. because the coal beds and overlying sediments that would be removed if the PSO Tract is mined are not continuous with (i.e., connected to) the coal beds and overlying sediments in Section 33. The coal beds and overlying sediments that would be removed from the PSO Tract are truncated by erosion and faulting, as shown in Figure 4-3. The erosional outcrop and faults act to isolate the coal and overlying aquifers in the block of coal that would be mined in the PSO Tract from the coal and overlying aquifers to the northwest, southwest, and southeast of the PSO Tract. Therefore, groundwater drawdowns in the coal and overlying aquifers that are projected to occur if the PSO Tract is mined would occur to the northeast, as depicted on Figure 4-3.

Comment Response 15: Letters 12, 13

a) The Final EIS incorporates the results of the regional air quality technical report prepared by Argonne Laboratories for the Wyoming *Final EIS and Proposed Plan Amendment for the Powder River Basin Oil and Gas Project* and the Montana *Final Statewide Oil and Gas EIS and Proposed Amendment of the Powder River and Billings Resource Management Plans*.

b) The Final EIS discloses both the voluntary measures that mines have initiated and the required precautions that WDEQ has put in place to protect the public from the potential health impacts of blasting in Section 3.4.5.6. The suggested measures included in the EPA comment letter are in place as required precautions and are being applied to mitigate the impacts of blasting releases. As discussed in Section 4.8.4.4 of the Final EIS, while OSM received citizen complaints concerning NO_x gases generated from blasting operations drifting off mine permit areas in

1995, 1998, and 1999, no citizen complaints were received by OSM or WDEQ during the 2001 evaluation year, which ended on September 30, 2001, or the 2002 evaluation year, which ended on September 30, 2002.

The Final EIS does include a discussion of public health exposure limits for NO_2 in Section 4.4.4.

As discussed in Comment Letter 16, the risk posed by NO_2 from blasting is very specific to the type of operation and to the location, and the measures that should be taken should therefore be very specific to the type of operation and the location.

c) The Crow Tribe is currently negotiating with the Bill Barrett Corporation regarding termination of their agreement to develop CBM on the eastern portion of the Crow lands. There are currently no existing coal leases or proposals to lease coal in the Youngs Creek Area. Montana BLM has processed one lease by application for a maintenance lease in the area since decertification of the Powder River Federal Coal Region (Spring Creek Mine), while Wyoming BLM has not received any applications to lease coal in Sheridan County and the one existing surface coal mine in this county (the Big Horn Mine) has closed down since decertification. Market demand for coal from this area, which was used to estimate coal production levels in the air quality impact analysis, is currently being met by existing coal mines and is projected to remain relatively stable from now through 2020. Development of new coal mines might become more economically feasible if production at the existing coal mines in this area declines and if the demand for the coal from this area remains stable, as is currently projected.

Comment Response 16: Letter 13

a) BLM determines what information is or is not included in the environmental analysis, whether it is prepared by a third-party contractor or by BLM. In the case of coal development in the Powder River Basin, BLM bases its data requirements on the Data Adequacy Standards for the Powder River Federal Coal Region. The surveys and monitoring data that are used in evaluating the impacts in the coal leasing EISs are generally used for both leasing and permitting purposes and the data are collected in accordance with the requirements of both the leasing and permitting agencies.

BLM provides the third party contractor with a preparation plan that identifies the information that needs to be included in the EIS. The preliminary document that BLM receives from the third party contractor is reviewed by cooperating agencies and BLM specialists and information

is added, updated, and corrected in response to the comments that are received from these agencies and specialists. BLM is responsible for the final content of the document that is released to the public. BLM's intent in editing these documents is to present the data objectively and allow the reader to determine the significance of the impacts and whether they are adverse or beneficial. When information is received that data are out of date or have been omitted or are incorrect, the EIS is changed to reflect this.

b) The EIS identifies the air quality, ground water, surface water, wildlife, noise, and transportation impacts that would be expected if the PSO Tract is mined, and addresses the proposed conveyor (see Comment Response 13). The EIS also identifies many of the regulatory compliance, mitigation and monitoring measures that would be required if the exchange is completed and if P&M proceeds with its plan to mine the coal in the PSO Tract. These measures, which include a requirement to replace existing water rights that are interrupted, discontinued, or diminished and the right of property owners to request a pre-blasting survey to document the condition of water wells and structures prior to mining, would be developed at the time a mining and reclamation permit is evaluated by WDEQ.

c) Executive summaries of the cultural resources present on the P&M tract have been sent to all tribes known to have an interest in the region, including the Crow and the Northern Cheyenne. The Crow have expressed an interest in visiting the area. A tour was set to occur last summer, but did not take place due to changes in the Crow Tribal Administration. BLM will work with all interested tribes to provide tours of the area and specific resources.

d) The regulations governing air emissions are complicated, but the information presented in the Draft EIS does reflect the regulations on potential emissions.

- Under PSD regulations, a surface coal mine, new or existing, is not a major source unless the PTE is equal to or exceeds 250 tons per year, as stated on page 3-24 of the Draft EIS.

- On page 4-11, the Draft EIS discusses the PSD regulations, and states "Specific types of facilities which emit, or have the PTE, 100 tpy or more of PM_{10} or other criteria air pollutants, or any facility which emits, or has the PTE, 250 tpy of (sic-should be or) more of PM_{10} or other criteria air pollutants, is considered a major stationary source. However, fugitive emissions are not counted against the PSD threshold unless the source is so designated by federal rule (40 CFR 52.2)." A surface coal mine is not one of the

"specific types" of facilities that would be considered a major stationary source with an emission of 100 tpy of PM_{10}.

- The discussion on page 4-12 of the Draft EIS addresses the Federal Operating Permit, or Title V Program, which is different from the PSD regulations. The Title V Program requires that a facility that has a PTE of more than 100 tpy of any regulated pollutant, 10 tpy of any single hazardous air pollutant (HAP), or 25 tpy or more of any combination of HAPs, from applicable sources to submit a Title V Permit.

According to WDEQ/AQD (Mike Warren), all new mines would need a New Source Review Permit, a Title V Operation Permit if emissions of any regulated pollutant would exceed 100 tpy, and a PSD permit if emission of PM_{10} or other criteria air pollutants would exceed 250 tpy. Currently, one of the existing mines in the Powder River Basin has a Title V permit and none of the existing mines in the Powder River Basin is a major source under PSD regulations.

e) The referenced discussion in the Draft EIS discusses the anticipated impacts to West Branch and Little Youngs Creek and wetlands in terms of mining disturbance of those drainages. Ash Creek is not included in that discussion because it would not be directly disturbed by mining. Surface water impacts to Ash Creek and to other creeks and wetlands in the area are addressed in the discussions in Sections 4.4.1, 4.4.5, and 4.8.5, which indicate that West Branch, Little Youngs Creek, and Youngs Creek would be diverted or blocked to prevent flooding if necessary, that changes in runoff characteristics and sediment discharges would occur during mining, that changes in drainage patterns and surface disturbance would decrease flows in most of the ephemeral and intermittent drainages exiting the mines sites, and that both state and federal regulations require that all surface runoff from mined lands be treated as necessary to meet effluent standards before it is allowed to flow off the mine permit areas.

f) The EIS identifies the impacts to wildlife related to energy development in the Powder River Basin, wildlife mitigation measures related to surface coal mining operations in Section 4.4.10 and in Table 4-8. The mitigation measures are in place for existing mines in the Powder River Basin and would be required if the exchange is completed and if P&M proceeds with its proposal to mine the PSO Tract. The Draft EIS (Sections 4.4.10 and 4.8.9) also point out that the WGFD has recommended that big game monitoring be discontinued on all existing mine sites in Wyoming due to the fact that monitoring has demonstrated a lack of impacts to big game on the existing mine sites in the eastern Powder River Basin.

g) The Final EIS references the results of the air quality impact analysis prepared by Argonne National Laboratories and presented in the Wyoming *Final EIS and Proposed Plan Amendment for the Powder River Basin Oil and Gas Project* (Wyoming Final Oil and Gas Project EIS) and the Montana *Final Statewide Oil and Gas EIS and Proposed Amendment of the Powder River and Billings Resource Management Plans* (Montana Statewide Oil and Gas EIS). In preparing these Final EISs, the BLM worked cooperatively with the EPA and the Wyoming and Montana Departments of Environmental Quality to improve the air quality analysis. Please refer to the Comment Responses in the Wyoming Final Oil and Gas Project EIS and the Montana Final Statewide Oil and Gas EIS for responses to comments received on the draft air quality impact analysis prepared by Argonne National Laboratories.

The proposed Ash Creek Mine would be located on the western edge of the area of analysis for CBM development in Wyoming. The air quality impact analysis incorporated the estimated potential emissions at active mines within the modeling domain for 2006, which was the projected peak emission year for the Montana and Wyoming CBM development. Coal production rates were estimated based on market demand for the coal for that year. Since the air quality impact analysis considers potential impacts during the projected peak emission year, and since market demand for coal from this part of the Powder River Basin is projected to remain fairly level with or without development of the Ash Creek Mine, cumulative impacts to air quality if the Ash Creek Mine is developed are not predicted to exceed cumulative air quality impacts estimated by the final Argonne air quality impact analysis.

h) The Draft and Final EIS address cumulative impacts to ground water in Section 4.8.5. As shown in Figure 4-3, the mineable coal beds in the PSO Tract are truncated by northeast trending faults on the northwestern and southeastern edges of the area to be mined and by the outcrop of the coal beds to be mined on the southwest side of the proposed Ash Creek Mine area. As a result, no cumulative impacts to groundwater are projected to the northwest, southwest, or south. Therefore, as discussed in the Draft and Final EIS, cumulative effects would occur primarily as a result of other activities that are occurring to the northeast in the same fault block as the PSO Tract, which would include CBM development and the Decker Mine. Projected drawdowns from mining operations at the Decker Mine do not extend into the PSO Tract area. CBM production in the same fault block is projected to extend into the PSO Tract. Two groundwater rights holders in Montana have been identified as potentially affected by the proposed mining operations on the PSO Tract. Mitigation is addressed in Table 4-8, and includes required replacement of existing water rights that are

interrupted, discontinued, or diminished by mining with water of equivalent quality.

i) The referenced statement in the Draft EIS was not intended as a commentary on the uniqueness of the visual resources of this area, it was intended to disclose that no visual resources have been identified on the PSO Tract that are uniquely different from the visual resources in the area surrounding the tract. The Final EIS has been revised to state this more clearly.

Comment Response 17: Letter 15

If the exchange is completed as proposed, the BLM and USFS would acquire the lands in the Bridger Lands, JO Ranch Lands, and Welch lands, which are currently privately owned. If these lands become public lands, no federal actions that would threaten any treaty rights or any sites are proposed, but tribes with an interest in these lands would be consulted if any federal actions that might affect treaty rights are proposed on these lands in the future.

For the PSO Tract in Sheridan County, Wyoming, exchange of the coal could lead to disturbance of the tract. An executive summary of the cultural resources identified on the PSO Tract has been sent to tribes identified as having an interest in the Powder River Basin. If the Shoshone-Bannock Tribes have an aboriginal interest in this area and wish to receive the summary of the cultural resources, please advise us to that effect. BLM will work with interested tribes to provide tours of the area and specific resources.

Comment Response 18: Letters 20, 21

Mr. John Willson, in a May 1, 2003 letter and a May 9, 2003 letter, commented on the Draft EIS. Mr. Willson pointed out that the land ownership shown on Figure 3-9 in the Draft EIS was incorrect. The Final EIS has been changed to reflect the ownership of the surface estate as discussed in Mr. Willson's comments.

P&M's exchange proposal is to exchange lands that they own for federal coal underlying the PSO Tract, which is described in Section 2.1 of the Final EIS. The PSO Tract includes federal coal underlying the surface land that P&M owns as well as coal underlying surface land that Mr. Willson and several other private entities own. In addition, the P&M exchange proposal includes federal coal underlying 6.41 acres of public land administered by BLM. Land ownership in the PSO Tract is described in Section 3.4.11 and shown in Figure 3-13 of the Final EIS. Mr. Willson indicates that he doesn't object to P&M acquiring coal under their surface, but he does object to P&M acquiring coal

under his surface. Mr. Willson's solution is to exchange private land (approximately 276.78 acres) that he owns adjacent to the Welch Ranch to BLM for the coal under his private surface (approximately 117.67 acres) in the proposed coal exchange tract (PSO Tract).

The exchange proposal in Mr. Willson's May 1, 2003 comment letter represents a separate conflicting exchange proposal with P&M's exchange proposal. The same coal or portions of the same coal would be exchanged under both the P&M proposal outlined in the Final EIS and under the new proposal made by Mr. Willson in his May 1 and May 9, 2003 letters. Mr. Willson is correct, in his May 9, 2003 letter, when he concludes that it has not been determined that the land P&M has offered is of sufficient value to obtain all of the coal in the designated area. As discussed in Comment Response 12, after completion of the Final EIS and prior to making a decision on whether or not to approve this exchange proposal, the authorized officer (the Wyoming State Director) will make a determination as to whether the exchange lands are of equal or approximately equal value or can be equalized. That determination will be publicly available. If the value of the lands that P&M is offering is not of sufficient value to obtain all of the coal in the PSO Tract, the regulations provide for modifying the exchange proposal by excluding lands and/or by the use of a cash equalization payment (43 CFR 2201.6). If the value of the federal coal in the PSO Tract is determined to be greater than the value of the lands P&M is offering for exchange, BLM will evaluate options for modifying the PSO Tract to equalize the values.

While the private lands BLM would acquire under the Willson proposal are adjacent to the Welch Ranch, they are much smaller parcels. Future acquisition of these smaller parcels may be in the public interest if the P&M exchange proposal outlined in the Final EIS is completed.

The BLM, the USFS, and P&M began exchange negotiations in 1998, and the current exchange proposal addressed in the Final EIS was developed based on those negotiations, on public scoping meetings and comments, and on potential public interest considerations associated with P&M's exchange proposal. BLM segregated the public lands proposed for transfer to P&M from all forms of appropriation (including new land exchange proposals) under the public land laws in a December 21, 2000 Notice of Exchange Proposal. Changing any of the existing exchange parameters by introducing a new conflicting exchange proposal at this point may jeopardize the exchange participants' ability to make a public interest determination and to complete the exchange. For these reasons, Mr. Willson's exchange proposal must be considered as a separate exchange proposal that cannot be incorporated into P&M's exchange proposal.